

## **7. MODIFIED TEXT OF REGULATIONS**

STATE OF CALIFORNIA  
OFFICE OF ADMINISTRATIVE LAW  
300 CAPITOL MALL, SUITE 1250  
SACRAMENTO, CA 95814

TITLE 1, CALIFORNIA CODE OF REGULATIONS  
ADOPT SECTIONS 48, 50 AND 52, AND AMEND SECTIONS 8 AND 55,  
REGARDING EMERGENCY REGULATIONS

TEXT

Text proposed to be added for the 45-day comment period is displayed in *italic* type.

Text proposed to be deleted for the 45-day comment period is displayed in ~~strikeout~~ type.

Text proposed to be added for the 15-day comment period is displayed in *italicized double underline* type.

Text proposed to be deleted for the 15-day comment period is displayed in ~~double strikeout~~ type.

Section 8. Express Terms and Final Text: Underline and Strikeout.

(a) For the purposes of this section:

(1) the term "regulation" includes authority and reference citations; ~~and~~

(2) the term "express terms" means the proposed regulation that is made available to the public with the notice of proposed action as required by Government Code section 11346.2(a); and

(3) the term "final text" means the certified copy of the regulation or order of repeal transmitted to OAL for filing with the Secretary of State and the six copies required by Government Code section 11343.

(b) The express terms and final text of the regulation shall use underline or italic to accurately indicate additions to, and strikeout to accurately indicate deletions from, the California Code of Regulations.

(c) For final text. ~~U~~nderline or italic is not required for the adoption of a new regulation or set of regulations if the final text otherwise clearly indicates that all of the final text submitted to OAL for filing with the Secretary of State is added to the California Code of Regulations.

(d) For a certificate of compliance filing pursuant to Government Code section 11346.1(e):

(1) the express terms shall indicate any changes to the California Code of Regulations, including changes that were adopted as an emergency pursuant to Government Code section 11346.1; and

(2) the final text shall indicate only any additional changes that have been made to the regulations since the emergency regulations were filed with the Secretary of State.

NOTE: Authority cited: Sections 11342.4 and 11349.1(c), Government Code. Reference: Sections 11343, 11343.1, ~~and~~ 11346.1 and 11346.2, Government Code.

Section 48. Notice of Proposed Emergency Action

Unless the emergency situation clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with the public interest, the notice required by Government Code section 11346.1(a) shall contain the following or substantially similar statement:

"Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6."

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Sections 11342.545, 11346.1, 11349.6, Government Code.

Section 50. ~~Notice of~~ Proposed Emergency Action Submission

(a) State agencies submitting emergency regulations to OAL pursuant to Government Code section 11346.1 shall include ~~with the emergency regulation either:~~

(1) Seven copies of the proposed text of the emergency regulation as set forth in section 6;

(2) A completed Form 400, with at least one Form 400 bearing an original signature, attached to each copy of the proposed text as set forth in section 6;

(3) The finding of emergency required by Government Code section 11346.1(b);

(4) A completed Standard Form 399 prepared in accordance with instructions by the Department of Finance; and

(5)(A) A statement by the submitting agency confirming that the submitting agency that it has complied with the requirement to provide notice of proposed rulemaking action pursuant to Government Code section 11346.1(a)(2); or

(B)(2) A statement by the submitting agency confirming that the submitting agency that the emergency situation addressed by the regulations clearly poses such an immediate, serious harm that delaying action to allow notice and public comment would be inconsistent with the public interest. The statement shall include:

~~(b) An agency submitting a statement pursuant to subdivision (a)(2) shall include the following within the finding of emergency:~~

~~(1) 1. Specific facts demonstrating by substantial evidence that failure to adopt the regulation within the time periods required for notice pursuant to Government Code section 11346.1(a)(2) and for public comment pursuant to Government Code section 11349.6(b) 12 calendar days following the date of the certification will likely result in serious harm to the public peace, health, safety, or general welfare; and~~

~~(2) 2. Specific facts demonstrating by substantial evidence that the immediate adoption/enactment of the proposed regulation can be reasonably expected to prevent or significantly alleviate that serious harm.~~

~~(c)(b) OAL shall not disapprove any emergency regulation submitted with a subsection (a)(5)(B) statement submitted pursuant to subdivision (a)(2) if it determines that the finding of emergency does not satisfy the requirements of subsection ~~division (b)~~ (a)(5)(B) 1. and 2.~~

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Sections 11342.545, 11346.1, 11349.6, Government Code.

Section 52. Readoption of Emergency Regulations

(a) Readoption of an emergency regulation pursuant to Government Code section 11346.1(h) ~~of the Government Code does not require~~ sending a notice of the proposed regulatory action pursuant to Government Code section 11346.1(a)(2).

(b) In addition to fulfilling the requirements for submission of regulatory actions described in sections 6 and 50, an agency requesting readoption of an emergency regulation shall provide the following:

(1) ~~Documentation explaining any changes in the emergency situation since~~ A statement that the emergency circumstances are unchanged since the initial adoption or prior readoption of the emergency regulation; or

(2) ~~An Updated finding of emergency documentation required by Government Code section 11346.1(b) of the Government Code for the initial submission of the emergency regulation, if necessary to reflect circumstances that have changed since the initial adoption or prior readoption, and~~

~~(c)(3)~~ A statement providing specific facts demonstrating by substantial evidence that the agency has made substantial progress and proceeded with diligence to comply with Government Code section 11346.1(e) of the Government Code.

(d) An agency requesting readoption of an emergency regulation may incorporate by reference the rulemaking record, identified by OAL file number, for the initial adoption and any prior readoption of the emergency regulation.

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Sections 11342.545, 11346.1, 11349.6, Government Code.

~~Section 54. Findings of Emergency~~

~~If the situation identified in the finding of emergency existed and was known by the agency adopting the emergency regulation more than 270 days prior to submission of the emergency regulation to OAL, the finding of emergency shall include facts explaining the failure to address the situation through nonemergency regulations.~~

~~NOTE~~

~~Authority cited: Section 11342.4, Government Code. Reference: Sections 11342.545, 11346.1, 11349.6, Government Code.~~

## Section 55. OAL Review of Public Comments.

(a) OAL may consider comments submitted directly to OAL by the public in connection with emergency regulation reviews, including the review of an emergency regulation proposed to be readopted. OAL shall not consider comments submitted directly to OAL by the public when OAL is reviewing:

- (1) certificate of compliance regulation filings under Government Code sections 11346.1(e) and 11349.6(d); or
- (2) non-emergency regulation filings under Government Code section 11349.3 and section 100.

(b) *Except when the emergency situation addressed by the regulations clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with the public interest, in* ~~in~~ reviewing emergency regulations pursuant to Government Code section 11349.6(b), OAL ~~may~~ *shall* consider comments received from the public concerning the proposed emergency adoption, amendment, or repeal, including comments regarding the finding of emergency, when all of the following conditions are met:

- (1) The comments are submitted to OAL in writing;
- (2) The comments are received by OAL ~~prior to the time OAL makes its decision regarding the approval or disapproval of the regulations~~ and within five calendar days after the ~~receipt~~ notice of the filing of the proposed emergency regulations is posted by OAL on its Internet Website;
- (3) The comments contain a notation that they are submitted to OAL for consideration in connection with an emergency regulation review and identify the topic of the emergency regulations to which they relate; and
- (4) OAL has confirmed that a copy of the comments has been transmitted to the rulemaking agency's contact person for the emergency regulation filing, as designated by the rulemaking agency on the Form 400.

(c) OAL shall not consider comments concerning emergency regulations unless the comments meet all of the conditions specified in subsections (b)(1) through (4).

(d) Any person who submits comments concerning emergency regulations to OAL shall ~~first~~ simultaneously transmit a complete copy of the comments to the rulemaking agency's contact person for the emergency regulation filing as designated by the rulemaking agency on the Form 400.

(e) OAL shall provide any person interested in submitting comments concerning emergency regulations with the name, address, and telephone number of the rulemaking agency's contact person for the emergency regulation filing as designated by the rulemaking agency on the Form 400.

(f) When OAL considers comments concerning emergency regulations which meet the conditions for consideration set forth in subsections (b)(1) through (4), OAL shall contact the rulemaking agency within one working day after the receipt of the comments to confirm that the



comments are being considered by OAL. OAL shall inform the rulemaking agency at that time that the agency has the opportunity to rebut or otherwise respond to the comments pursuant to Government Code section 11349.6(c).

(g) OAL will consider agency rebuttals or responses to be timely as follows:

(1) Except as provided in subsections (2) and (3), OAL shall consider rulemaking agency rebuttals or responses to comments concerning emergency regulations if, and only if, they are submitted to OAL in writing and are received by OAL within eight calendar days after the receipt of the regulations.

(2) If the eighth calendar day falls on a Saturday, then the agency rebuttal or response is due on the seventh calendar day.

(3) If there are one or more state holidays between the fifth calendar day and the eighth calendar day after the regulations were filed with OAL, then the agency rebuttal or response is due on the ninth day. However, if that ninth calendar day falls on a Saturday, Sunday, or a state holiday, the agency's rebuttal or response is due by 10:00 a.m. of the last day the regulation must be reviewed by OAL in accordance with Government Code section 11349.6(b).

(h) For purposes of compliance with this section, OAL may elect to treat multiple substantially similar comments received from different sources as a single comment submission.

Note: Authority cited: Sections 11342.4 and 11349.1, Government Code. Reference: Sections 11342.545, 11346.1, 11349.1, 11349.3 and 11349.6, Government Code.